

OFFICE OF THE SECRETARY OF STATE
SHEMIA FAGAN
SECRETARY OF STATE

CHERYL MYERS
DEPUTY SECRETARY OF STATE



ARCHIVES DIVISION
STEPHANIE CLARK
DIRECTOR
800 SUMMER STREET NE
SALEM, OR 97310
503-373-0701

TEMPORARY ADMINISTRATIVE ORDER
INCLUDING STATEMENT OF NEED & JUSTIFICATION

BHS 21-2022

CHAPTER 309
OREGON HEALTH AUTHORITY
HEALTH SYSTEMS DIVISION: BEHAVIORAL HEALTH SERVICES

FILED

12/02/2022 8:44 AM
ARCHIVES DIVISION
SECRETARY OF STATE
& LEGISLATIVE COUNSEL

FILING CAPTION: Eligibility requirements for enhanced rate increases for Culturally and Linguistically Specific Services (currently Medicaid only).

EFFECTIVE DATE: 12/02/2022 THROUGH 05/30/2023

AGENCY APPROVED DATE: 12/02/2022

CONTACT: Alfonso Ramirez
503-580-1511
alfonso.ramirez@dhsosha.state.or.us

500 Summer St NE
Salem, OR 97301

Filed By:
Kalina Bathke
Rules Coordinator

NEED FOR THE RULE(S):

HB5202 allocated a total of \$42.5 million in state general funds to the Oregon Health Authority (OHA) to increase Medicaid reimbursement rates for behavioral health providers. Fee for Service rates are retroactive to July 1, 2022. Directed payment to Coordinated Care Organizations (CCOs) will be effective January 1, 2023, pending CMS approval. As part of this rate increase, OHA will incentivize the provision of Culturally and Linguistically Specific Behavioral Health Services (CLSS). The Centers for Medicare and Medicaid Services (CMS) approved the Fee for Service rate increase on November 10, 2022 and this requires temporary rules until a permanent rule process can occur.

JUSTIFICATION OF TEMPORARY FILING:

- (1) If a temporary rule is not filed, this will cause a hardship to culturally and linguistically specific service providers as OHA will be delayed in its retroactive reimbursement for services rendered since July 1, 2022. The current network of behavioral health providers is unstable and further delay may also harm retention and recruitment efforts within this provider network and may impact the provision of desperately needed behavioral health services to people in need.
- (2) Providers of culturally and linguistically specific services and people from communities already impacted by behavioral health inequities that the CLSS services are designed to serve.
- (3) Failure to take rulemaking action would hinder and delay this enhanced rate that is intended to support behavioral health services for communities most impacted by behavioral health inequities. Without these enhanced payments, culturally and linguistically specific service organizations may not be able to meet the growing demand for these services.
- (4) This temporary action which has been informed by direct community engagement will provide much needed financial relief to culturally and linguistically specific service providers so they can meet the demand for culturally and linguistic behavior health services.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

None

RULES:

309-065-0000, 309-065-0010, 309-065-0030, 309-065-0040, 309-072-0020

ADOPT: 309-065-0000

RULE SUMMARY: Establishes purpose of 309-065 CLSS program

CHANGES TO RULE:

309-065-0000

Purpose and Scope/

These rules establish processes and procedures for behavioral health providers, delivering services that are culturally and linguistically specific, to receive enhanced payment for patients on the Oregon Health Plan.

Statutory/Other Authority: ORS 413.042

Statutes/Other Implemented: HB 5202 (2021)

ADOPT: 309-065-0010

RULE SUMMARY: Establishes definitions for 309-065 CLSS program

CHANGES TO RULE:

309-065-0010

Definitions/

(1) "Culturally and linguistically specific behavioral health services (CLSS)" means services that are grounded in the cultural values of minoritized communities to elevate their voices and experiences, with the aim of enhancing emotional safety, belonging, and a shared collective cultural experience for healing and recovery of the community served.¶

(2) "Culturally and linguistically specific behavioral health organization" means an organization that provides culturally and linguistically specific services to its clients. ¶

(3) "Culturally and linguistically specific behavioral health program" means a program that provides culturally and linguistically specific services to its clients that exists within a larger organization. ¶

(4) "Culturally and linguistically specific behavioral health individual provider" means an individual that provides culturally and linguistically specific services to their clients. / ¶

(5) "Minoritized community or communities" are communities that have experienced historical and contemporary racism, trauma, and social, political, and economic injustices.

Statutory/Other Authority: ORS 413.042

Statutes/Other Implemented: HB 5202 (2021)

ADOPT: 309-065-0030

RULE SUMMARY: Establishes qualifications for 309-065 CLSS program

CHANGES TO RULE:

309-065-0030

Culturally and Linguistically Specific Services Individual Qualifications

(1) In order to qualify for culturally and linguistically specific behavioral health services (CLSS) enhanced payments, individual behavioral health providers must:

(a) Be enrolled as a Medicaid provider with the Oregon Health Authority (OHA);

(b) Demonstrate the ability to serve a particular minoritized community or communities, such as but not limited to, Black, Indigenous, people of color, American Indian/ Alaska native, D/deaf, deaf-blind, LGBTQIA2S+, transgender, immigrant and refugee communities.

(c) Demonstrate the ability to serve a particular minoritized community or communities; an individual behavior health provider must provide information that shows the following:

(A) Direct knowledge of lived experiences of the culturally specific community being served, including but not limited to the impact of structural and individual racism, minoritization or discrimination on such communities;

(B) Knowledge of specific inequities documented in the culturally specific community or communities being served;

(C) An ability to support and affirm cultural practices for the community or communities being served, such as but not limited to:

(i) Health and safety beliefs or practices;

(ii) Positive cultural identity, pride, or resilience;

(iii) Immigration dynamics;

(iv) Religious beliefs.

(D) An ability to support and affirm intersectional identities in the provision of services for people from multiple communities or with multiple identities. For example, the ability to affirm and support the unique needs of a person who is Black, Muslim and an immigrant.

(d) Have extensive experience working with or being immersed in the same minoritized community they serve.

(2) The information required to be provided under section (1)(b) and (c) of this rule can include, but is not limited to:

(a) A resume or curriculum vitae detailing academic credentials, relevant course work or certifications; or

(b) A narrative that details the individual's professional history and experience, including specific example, without identifying clients.

Statutory/Other Authority: ORS 413.042

Statutes/Other Implemented: HB 5202 (2021)

ADOPT: 309-065-0040

RULE SUMMARY: Establishes qualifications for 309-065 CLSS program

CHANGES TO RULE:

309-065-0040

Bilingual Service and Sign Language Provider Qualifications

(1) Individual providers who deliver direct care services in a language other than English or in sign language may be eligible to receive culturally and linguistically specific behavioral health services (CLSS) enhanced payments for the service provision for clients to whom direct care services were delivered in a language other than in English, or in sign language. Oral or sign language interpretation is not eligible for this enhanced payment.

(2) In order to qualify for enhanced payment a direct care behavioral health provider must:

(a) Be enrolled as a Medicaid provider with the Oregon Health Authority (OHA); and

(b) Be a Bilingual service provider and identify the language or languages other than English that the provider uses in providing direct care services to clients that speak that language, and must provide:

(A) Proof of having passed a language proficiency assessment by an OHA approved language proficiency testing center in the last three years for the languages identified; or

(B) A narrative detailing how proficiency in the language was acquired, such as growing up in a home where this language was the dominant language used, If no language proficiency assessment is available in a particular language.

(c) Sign language service providers must provide:

(A) Proof of current sign language interpreter certification from an OHA approved sign language interpreter testing center; or

(B) A narrative detailing how proficiency was acquired in sign language, such as growing up in a home where sign language was the dominant language used./

Statutory/Other Authority: ORS 413.042

Statutes/Other Implemented: HB 5202 (2021)

ADOPT: 309-072-0020

RULE SUMMARY: Establishes qualifications for 309-065 CLSS program

CHANGES TO RULE:

309-072-0020

Culturally and Linguistically Specific Services Organization and Program Qualifications

(1) In order to qualify for culturally and linguistically specific behavioral health services (CLSS) enhanced payments, organizations and programs must:

(a) Be enrolled as a Medicaid provider with the Oregon Health Authority (OHA);

(b) Demonstrate the ability to serve a particular minoritized community or communities, such as but not limited to Black, Indigenous, people of color, American Indian/Alaska Native, D/deaf, deaf-blind, LGBTQIA2S+, or immigrant and refugee communities.

(c) Demonstrate the ability to serve a particular minoritized community or communities; an organization or program must provide information that shows the following:

(A) Direct knowledge of lived experiences of the culturally specific community or communities being served, including but not limited to the impact of structural and individual racism, minoritization or discrimination on such communities;

(B) Knowledge of specific inequities documented in the culturally specific community or communities being served;

(C) An ability to support and affirm cultural practices for the community or communities being served, such as but not limited to:

(i) Health and safety beliefs, or practices;

(ii) Positive cultural identity, pride, or resilience;

(iii) Immigration dynamics;

(iv) Religious beliefs.

(D) An ability to support and affirm intersectional identities in the provision of services for people from multiple communities or with multiple identities. For example, the ability to affirm and support the unique needs of a person who is Black, Muslim and an immigrant.

(d) Organizations must:

(A) Be primarily led and staffed by people that have extensive experience working with or being immersed in the same minoritized community they serve; or

(B) Have a history of at least five years primarily serving the minoritized community in a behavioral health setting.

(e) Programs must:

(A) Be primarily staffed and render services provided by people that have extensive experience working with or being immersed in the same minoritized community or communities that are being served; or

(B) Have a history of at least five years primarily serving the minoritized community in a behavioral health setting.

(2) The information required to be provided under section (1)(b) though (d) of this rule can include but is not limited to:

(a) Detailed policies and procedures;

(b) Staff training requirements;

(c) A narrative that details the organization or program's history and experience, including specific examples, without identifying any individual clients.

Statutory/Other Authority: ORS 413.042

Statutes/Other Implemented: HB 5202 (2021)